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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,974	02/09/2001	Tony Joe Brice	7099.1269	8166

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ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000		

EXAMINER	
POND, ROBERT M	

ART UNIT	PAPER NUMBER
3625	

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07/26/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/779,974

Applicant(s)

BRICE ET AL.

Examiner

Robert M. Pond

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 May 2007 and 17 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 18 May 2007 has been entered.

### ***Response to Amendment***

The Applicant amended independent claims 1 and 14 and newly added claim 19-21. All pending claims 1-21 were examined in this non-final office action.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1 and 14 have been considered but are moot in view of the new ground(s) of rejection as necessitated by perfected declaration under 37 CFR 1.131 and amendment.

### ***37 CFR 1.131***

The declaration filed on 17 July 2007 under 37 CFR 1.131 is sufficient to overcome the Domenick US 2002/0072937 reference as applied to Claims 1 and

14. Priority is recognized as being prior to June 20, 2000. Should any future amendment(s) to claims 1 and/or 14 incorporate subject matter not disclosed in the declaration but supported in the instant specification will revert the amended claim(s) as a whole to the original priority date of the instant application. Any dependent claims not supported by the Applicant declaration maintain a priority date of the filing date of the instant application. Please note, Exhibits 1-5 fail to support possession of system and present financial arrangements.

***Requirement for Information***

An issue of public use or on sale activity has been raised in this application. In order for the examiner to properly consider patentability of the claimed invention under 35 U.S.C. 102(b), additional information regarding this issue is required as follows: Evidence the claimed invention may have been in public use directly or indirectly via Vision One-to-One as disclosed in PTO-892, Item U: Sabre. Sabre discloses the Vision One-to-One project integrating suppliers and selling agents into one system to facilitate travel package customization and further discloses providing customized availability, commission data, and premium services. The Examiner is requesting documents subject to this Requirement for Information pertaining to Vision One-to-One. The Applicant may consider Item U as evidence supporting the taking of Official Notice below.

Applicant is reminded that failure to fully reply to this requirement for information will result in a holding of abandonment.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

- 1. Claims 1-3, 6-10, 14, 17, and 18 are rejected under 35 USC 102(e) as being anticipated by Sobalvarro (US 7,092,892).**

Sobalvarro teaches all the limitations of claims 1-3, 6-10, 14, 17, and 18. For example, Sobalvarro discloses a system and method of dynamically grouping and selling products or services in response to consumer constraints and selections (see at least abstract; Fig. 1; col. 1-col. 6). Sobalvarro discloses an advantageous implementation provided by is a computer system for offering travel arrangements over a decentralized computer network to a consumer using a web-browsing appliance. The computer system includes a data storage arrangement that stores descriptions of available travel components and at least one travel package template. A user interface element coupled to the network elicits at least one constraint from a consumer. A package engine dynamically generates at least one travel package based on the elicited consumer constraint, at least one travel package template, and at least one stored available travel component description. The package engine offers the generated travel package to the consumer by transmitting a description of the generated travel package over the decentralized computer network to the consumer's web browsing appliance (see at least col. 4, lines 42-56). Sobalvarro further discloses:

- Receiving a request identifying an interest in a set of items: system elicits the consumer's mood and other constraints (see at least Fig. 2B; Fig. 2C; Fig. 3B (264); col. 13, line 66-col. 14, line 5).
- Identifying potential providers capable of providing items; in response to receiving the request: subset of package schema is selected; determines which items fit or match; uses algorithm to match provider's products (see at least Fig. 3B (266-268); col. 14, lines 4-12).
- Packaging multiple items from a plurality of different providers: produces dynamically created candidate set of packages to present to the consumer (see at least Fig. 3B (270); col. 14, lines 13-21); present financial arrangements: Both consumers and suppliers get a much better solution from system versus other providers. Consumers get great values because the system is able to offer packages at a discount to what the consumer would pay if he or she created the package on his or her own (due to established partnerships with suppliers) (see at least col. 11, lines 3-8).
- Providing information reflecting the package of items: presents packages to the consumer (see at least Fig. 3B (270); col. 14, lines 12-21).
- Receiving a purchase request: receives purchase selection from consumer (see at least Fig. 3B (274); col. 14, lines 22-23).
- Providing a confirmation: systems confirms availability, locks the items in the database, decrements the count of all selected items within the

database and completes and confirms the transaction with the consumer (see at least Fig. 3B (276); col. 14, lines 24-26).

- Providing information reflecting the package of items in response to the request. Descriptions of products and/or services are entered into the system's database and presented to the consumer for review and purchase (see at least abstract; see at least col. 4, lines 42-56).
- Combining items into the package such that a total price associated with the package is less than a sum of prices for all the items in the package individually. Both consumers and suppliers get a much better solution from system versus other providers. Consumers get great values because the system is able to offer packages at a discount to what the consumer would pay if he or she created the package on his or her own (due to established partnerships with suppliers) (see at least col. 11, lines 3-8). Please note: Total  $x+y$  using system is less due to discounting than Total  $x+y$  without discounting.
- Discounting packaged items: Please note examiner's interpretation: price of car rental will be less than if purchased alone, and total price of package combining car rental with a particular airline results in cost that is less than the sum of the car rental purchased alone and airfare purchased alone.
- Package request processor: (see at least Fig. 3(20); Fig. 3A (202); col. 4, lines 42-56).

- Provider database: (see at least Fig. 3A (400)).
- Booking engine. Computer reservation service (see at least Fig. 3 (208)).

Pertaining to system Claims 14, 17, and 18

Rejection of claims 14, 17, and 18 is based on the same rationale as noted above.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

- 2. Claims 4, 5, 15, 16, and 19-21 are rejected under 35 USC 103(a) as being unpatentable over Sobalvarro (US 7,092,892) in view Official Notice (regarding old and well-known in the arts).**

Sobalvarro teaches all the above as noted under the 102(e) rejection and further teaches i) selling providers using the system to their services and/or products into bundled packages with other providers, ii) third-parties (i.e. travel agents/agencies) using the dynamic package service via their tradition travel websites by linking to the Sobalvarro system (see at least col. 11, line 53-col. 12, line 3), and iii) tapping into perishing inventory offers a huge opportunity to increase efficiency, reduce waste and increase profits (i.e. for providers). Although Sobalvarro does not disclose compensating providers and selling agents, commission structure, and notifying selling providers and agents,



Sobalvarro in combination with Official Notice teach and suggest the claimed invention. This examiner takes the position that it was old and well-known in the arts at the time the invention was made that sellers of goods and services were compensated by being paid a commission based upon commission structures (e.g. a percentage of gross sales, a percentage of net sales (sales price minus costs), or combination). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Sobalvarro to disclose selling provider and agent compensation and commission structure as taught by Official Notice, in order to more fully inform selling providers how they will be compensated, and thereby attract selling providers to the service.

- 3. Claims 11-13 are rejected under 35 USC 103(a) as being unpatentable over Sobalvarro (US 7,092,892) in view of Walker (Paper #5, IDS, patent number 6,138,105).**

Sobalvarro teaches all the above as noted under the 102(e) rejection but does not disclose specifics on bundle pricing schemes. On the other hand, Walker teaches bundled packaging of goods and services and pricing of bundled packages. Walker further teaches:

- bundling French fries (X: examiner's notation for regular retail price of French fries) and soda (Y: examiner's notation for regular retail price of

- soda) at a single price that is less than the sum of the prices of the individual products (bundled single price  $< (X+Y)$ ) (see col. 1, lines 33-37),
- bundling of product X (product ID 1) with product Y (product ID 2) where at least the bundled price of X is 10% less than retail price of X by a predetermined percentage (see at least Fig. 5 (506); col. 6, lines 35-62).

Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Sobalvarro to implement bundled pricing methods as taught by Walker, in order to provide a pricing incentive to the consumer, and thereby increase sales.

Although Sobalvarro does not specifically disclose the item being less than the item suggested retail price by a percentage, Walker teaches setting an item price included in a bundle lower than the retail price of the item by a predetermined percentage to create a purchasing incentive (see at least Fig. 5 (506); col. 6, lines 35-62). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Sobalvarro to use a predetermined percentage to compute a lower item price as taught by Walker, in order to provide a pricing incentive to the consumer, and thereby increase sales.

***Conclusion***

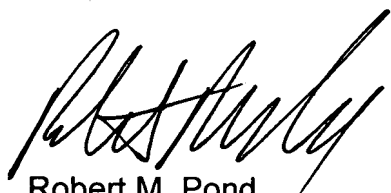
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sabre: Quinlan, Michael; "Sabre's Two-edge sword." Travel Agent, 10 May 1999, v295,n3p24, Dialog file 16 #06343324, 5pgs; teaches Sabre's Vision One-to-One project integrating suppliers and selling agents into one system to facilitate travel package customization and further discloses providing customized availability, commission data, and premium services.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert M. Pond  
Primary Examiner  
July 21, 2007



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